

the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 *et seq.* The purpose of these rules is to establish procedures for implementing the Freedom of Information Act, 5 U.S.C. 552; to provide guidance for those seeking to obtain information from the Commission; and to make all designated information readily available to the public. The scope of these rules may be limited to requests for information that is not presently the subject of litigation before the Commission and that is not otherwise governed by the Commission's Procedural Rules at 29 CFR part 2700.

§ 2702.2 Location of offices.

The Federal Mine Safety and Health Review Commission maintains its central office at Suite 600, 1730 K Street NW., Washington, DC 20006. It has two regional offices for Administrative Law Judges, one at Skyline Towers No. 2, Tenth Floor, 5203 Leesburg Pike, Falls Church, Virginia 22041, and the other at Suite 320, 333 West Colfax, Denver, Colorado 80204.

§ 2702.3 Requests for information.

All requests for information should be in writing and should be mailed or delivered to Executive Director, Federal Mine Safety and Health Review Commission, 6th Floor, 1730 K Street NW., Washington, DC 20006. The words "Freedom of Information Act Request" should be printed on the face of the envelope. A determination whether to comply with the request will be made by the Executive Director, with the consent of a majority of the Commissioners. Except in unusual circumstances, the determination will be made within 10 working days of receipt. Appeals of adverse decisions may be made to the Chairman of the Commission, at the same address, within 10 working days. Determination of appeals will be made by the Chairman within 20 working days of receipt.

§ 2702.4 Materials available.

Materials which may be made promptly available from the Commission include, but are not limited to:

Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

Quarterly indices providing identifying information as to the opinions described in the preceding paragraph which may be relied upon, used, or cited as precedent;

Any statements of policy and interpretations which have been adopted by the agency and are not published in the FEDERAL REGISTER.

§ 2702.5 Fees applicable—categories of requesters.

(a) When documents are requested for commercial use, requesters will be assessed the full direct costs of searching for, reviewing for release, and duplicating the records sought.

(b) When records are being requested by educational or noncommercial scientific institutions whose purpose is scholarly or scientific research, and not for commercial use, the requester will be assessed only for the cost of duplicating the records sought, but no charge will be made for the first 100 paper pages reproduced.

(c) When records are being requested by representatives of the news media, the requester will be assessed only for the cost of duplicating the records sought, but no charge will be made for the first 100 paper pages reproduced.

(d) For any other request not described in paragraphs (a) through (c) of this section, the requester will be assessed the full direct costs of searching for and duplicating the records sought, except that the first two hours of manual search time and the first 100 paper pages of reproduction shall be furnished without charge.

(e) For purposes of paragraphs (b) through (d) of this section, whenever it reasonably appears that a requester of records or a group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, such requests will be aggregated and fees assessed accordingly.

[54 FR 3022, Jan. 23, 1989]

§ 2702.6 Fee schedule.

(a) *Search fee.* The fee for searching for information and records shall be \$10 per hour for clerical time and \$20 per hour for professional time. Fees for searches of computerized records shall be the actual cost to the Commission

but shall not exceed \$300 per hour. This fee includes machine time and that of the operator and clerical personnel. The fee for computer printouts shall be \$.40 per page. If search charges are likely to exceed \$25, the requester shall be notified of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Time spent on unsuccessful searches shall be fully charged.

(b) *Review fee.* The review fee shall be charged for the initial examination by the Executive Director of documents located in response to a request in order to determine if it may be withheld from disclosure, and for the deletion of portions that are exempt from disclosure, but shall not be charged for review by the Chairman or the Commissioners. *See* § 2702.3. The review fee is \$30 per hour.

(c) *Duplicating fee.* The copy fee for each page of paper up to 8½" × 14" shall be \$.15 per copy per page. Any private sector services required will be assessed at the charge to the Commission. If duplication charges are likely to exceed \$25, the requester shall be notified of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated.

[54 FR 3022, Jan. 23, 1989]

§ 2702.7 No fees; waiver or reduction of fees.

(a) No fees shall be charged to any requester, including commercial use requesters, if the anticipated cost of processing and collecting the fee would be equal to or greater than the fee itself. Accordingly, the Commission has determined that fees of less than \$10 shall be waived.

(b) Documents shall be furnished without any charge or at a charge reduced below the fees otherwise applicable if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(1) The following six factors will be employed in determining when such fees shall be waived or reduced:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government";

(ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding";

(iv) The significance of contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities;

(v) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(vi) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(2) The Executive Director, upon request, shall determine whether a waiver or reduction of fees is warranted. Requests shall be made concurrently with requests for information under § 2702.3. Appeals of adverse decisions may be made to the Chairman within 5 working days. Determination of appeals will be made by the Chairman within 10 working days of receipt.

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§ 2702.8 Advance payment of fees; interest; debt collection procedures.

(a) Advance payment of fees generally will not be required. However, an advance payment (before work is commenced or continued on a request) may be required if the charges are likely to exceed \$250.

(b) Requesters who have previously failed to pay a fee charged in timely fashion (i.e., within 30 days of the date of billing) may be required first to pay that amount plus any applicable interest (or demonstrate that the fee has